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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/914,743 08/19/97 CERRETA

M 6586R

HM12/0228

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EXAMINER

WHITE, E

ART UNIT	PAPER NUMBER
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1623

DATE MAILED:

10  
02/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/914,743

Applicant(s)

CERRETA et al.

Examiner

WHITE

Group Art Unit

1623



☒ Responsive to communication(s) filed on Nov 29, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-55 is/are pending in the application.

Of the above, claim(s) 20-40 and 55 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-19 and 41-54 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

*Howard C. Lee*

Howard C. Lee  
Primary Examiner  
Art Unit 1623

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Amendment B filed November 29, 1999 has been received and entered into the record.
2. Claims 1-55 are pending in the case. Claims 20-40 and 55 are withdrawn from consideration.
3. All 35 U.S.C. statutes not cited in this Office action can be found cited in full in a previous Office action.

#### **Restriction Requirement**

4. Applicant's election with traverse of Group I, Claims 1-19 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that searching the two claim groups together would present no undue burden for the Examiner. This is not found persuasive because there is generally more than one way to prepare a composition, which is evidenced in the instant application wherein at least 3 independent claims ( see claims 20, 40 and 55) have been disclosed that sets forth various procedures for preparing the instantly claimed composition. However, if the elected product claims are found allowable, the processes for preparing the product may be considered by the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

#### **35 USC 112, Second Paragraph Rejection**

5. Claims 1, 2, 4 and 7-12 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Applicant's arguments filed November 29, 1999 have been fully considered but they are not persuasive. Applicant's argument on page 6 of their response have been carefully considered but is not persuasive since the argument is only directed to the terms "at least"/"less than" and "about" as if they were recited separately in the claims, and not as one phrase, --at least about--, for example.
- 7.

#### **35 USC 103 Rejection**

8. Claims 1-19 and 41-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Elsen et al (US Patent No. 5,422,131).

9. Applicant's arguments filed November 29, 1999 have been fully considered but they are not persuasive. Applicant's argument on pages 6-8 have been carefully considered, but are not persuasive since the instant claims set forth a nondigestible oil composition which is similar to the nondigestible fat composition of the Elsen et al patent, which include similar polyester components having similar melt points, similar amounts by weight of polyol fatty acid polyester which includes 60-99% liquid polyol fatty acid polyester and 1-40% of the solid polyol fatty acid polyester. A comparison of the Consistency of the nondigestible compositions cannot be determined since the Elsen et al patent does not set forth such a measurement. Accordingly, the rejection of Claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over the Elsen et al patent is maintained for the reasons already of record on pages 4-6 of the Office Action filed May 26, 1999.

10. Summary: Claims 1-19 and 41-54 are rejected; claims 20-40 and 55 are withdrawn from consideration.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

*E. White*

White

February 25, 2000

*Howard C. Lee*

Howard C. Lee  
Primary Examiner  
Art Unit 1623